

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN ASSEMBLY JULY 2, 2003

SENATE BILL

No. 534

Introduced by Senator Romero

(Coauthors: Senators Alarcon, Escutia, Kuehl, and Soto)

(Coauthors: Assembly Members Koretz, Oropeza, and Yee)

February 20, 2003

An act to add Section 6333 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 534, as amended, Romero. Employment rights.

Under existing law, the Occupational Safety and Health Standards Board may adopt occupational safety and health standards.

This bill would prohibit the use of a short-handled hand tool in agricultural operations, if the use of the tool requires an employee to stoop, kneel, or squat, except when the employer can demonstrate long-handled tools, or other alternatives can reasonably be expected to cause significantly greater damage to crops, as specified and determined by the Division of Occupational Safety and Health. The bill would further require employers to limit hand weeding, thinning, or hot-capping and to provide employees with protective equipment and additional rest breaks if kneeling is required. The bill would further provide that a violation of the bill would be deemed to be a violation of an occupational safety and health standard.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The use of the short-handled hoe, known as “el cortito” (“the short one”), was banned in 1975 by the California Supreme Court after uncontradicted medical evidence established it caused debilitating back injuries to farmworkers.

(b) A resurgence in the use of illegal short-handled tools in the early 1990’s resulted in enforcement activity by the Division of Occupational Safety and Health, which minimized this practice, but the division also permitted employers to require hand weeding instead, even if alternative long-handled tools could have been used.

(c) In 1993, the Medical Unit of the division evaluated hand weeding in Ventura County and recommended that this enforcement loophole be closed, citing the added stress on the backs of farmworkers which resulted from being 6 to 12 inches closer to the ground than when using a short-handled tool.

(d) A number of legislative and administrative efforts to close the loophole have been undertaken since 1993, but all have failed to arrive at a 100-percent consensus with agricultural industry groups, some of which continue to express opposition to the nearly 30-year ban on short-handled tools.

(e) This legislation is intended to close the hand weeding loophole to the short-handled tool ban by generally prohibiting hand weeding where reasonably available long-handled tools or other alternatives can be used without causing significant damage to a crop or to closely integrated production materials or irrigation systems, or where a crop has otherwise been specifically exempted because of narrow circumstances unique to that crop.

(f) Therefore, the Legislature affirms that the division should be given broad discretion to implement this long overdue and critical legislation, and specifically provides additional discretion to the division when making determinations related to significant damage to organic crops.

SEC. 2. Section 6333 is added to the Labor Code, to read:

6333. (a) As used in this section, the following terms have the following meanings:

1 (1) An “appropriate” long-handled hand tool means one that
2 is designed to allow for weeding, thinning, or hot-capping of a
3 particular crop in a manner that does not require the employee to
4 stoop, kneel, or squat.

5 (2) “Crop” means any agricultural or horticultural
6 commodity.

7 (3) “Proper use” of a tool means use of a tool in the manner
8 generally employed by agricultural employees that is consistent
9 with its intended design and purpose.

10 (4) A “reasonably available” long-handled hand tool means
11 one available for purchase from sources generally known to
12 members of the agricultural industry and does not preclude
13 custom-made tools.

14 (5) A “reasonably available mechanical or cultural
15 non-pesticide, *non-herbicide*, non-hand weeding, thinning, or
16 hot-capping alternative” means one that the employer knew or
17 should have known was available and was not cost-prohibitive to
18 implement.

19 (b) Hand-held tools shall be kept in good condition and be
20 safely stored.

21 (c) The use of a short-handled hoe or any other short-handled
22 tool is prohibited in agricultural operations, as defined in Section
23 3437 of Title 8 of the California Code of Regulations, for weeding,
24 thinning, or hot-capping when the tool is used in a stooped,
25 kneeling, or squatting position. Employees engaged in weeding,
26 thinning, or hot-capping shall use a long-handled hand tool, as
27 defined in Section 3437 of Title 8 of the California Code of
28 Regulations. Long-handled tools are required except when one or
29 more of the following conditions applies:

30 (1) The work is performed in a manner that does not require an
31 employee to stoop, kneel, or squat.

32 (2) (A) Employees are weeding a crop that is grown under
33 continuous plastic mulch or woven cloth sheets.

34 (B) The exception provided in subparagraph (A) does not apply
35 to areas between crop beds or in any other areas where continuous
36 plastic mulch or woven cloth sheets are not present, and does not
37 apply when the use of an appropriate long-handled hand tool to
38 weed near the continuous plastic mulch or woven cloth sheets is
39 possible without causing significant damage to the mulch or
40 woven cloth sheets.

1 (3) (A) The employer can demonstrate that proper use of a
2 reasonably available and appropriate long-handled hand tool and
3 any reasonably available mechanical or cultural non-pesticide,
4 *non-herbicide*, non-hand weeding, thinning, or hot-capping
5 alternative can reasonably be expected to cause significantly
6 greater damage than would be caused by hand weeding, thinning,
7 or hot-capping to the particular crop planted in the entire field or
8 in the area or areas in that field at the crop's current state of
9 development, for which an exception is claimed, or the employer
10 can demonstrate that materials or irrigation systems are so closely
11 integrated with the particular crop at its current state of
12 development that a reasonably available and appropriate
13 long-handled hand tool could not be used without causing
14 significant damage to the materials or irrigation systems.

15 (B) The division shall have broad discretion to determine
16 whether an employer meets the burden of proof required for the
17 exception provided in paragraph (A).

18 (i) In making a determination, the division shall consider at
19 least both of the following factors:

20 (I) Whether there was a reasonable effort to attempt to properly
21 use an appropriate long-handled hand tool and any available
22 non-hand weeding, thinning, or hot-capping alternative to weed,
23 thin, or hot-cap in the entire field or in the area or areas of the field
24 for which an exception is claimed.

25 (II) Whether the attempt to use these tools and alternatives
26 caused, causes, or would necessarily cause, significantly greater
27 damage to the crop planted in the entire field or in the area or areas
28 of the field at the crop's current state of development than did hand
29 weeding, thinning, or hot-capping, and the attempt is or was
30 conducted in the entire field or in the area or areas of the field for
31 which the exemption is claimed.

32 (ii) (I) After making one attempt pursuant to subclause (I) of
33 clause (i), nothing herein shall require an employer to make an
34 additional attempt where all of the following apply: the identical
35 crop is being produced under equivalent conditions in a field; that
36 crop is at a substantially similar state of development as the crop
37 for which the prior attempt was made; the weed conditions in the
38 entire field or in the area or areas of the field for which an attempt
39 would be made are substantially similar to those of the crop for
40 which the prior attempt was made; and the employer has made a

1 reasonable effort to reevaluate whether the degree of hand
2 weeding, thinning, or hot-capping required for that crop could be
3 reduced or eliminated by implementing either any reasonably
4 available new long-handled hand tools, and reasonably available
5 new administrative controls, or any reasonably available new
6 mechanical or cultural alternatives, consistent with the limitations
7 in paragraph (2) of subdivision (e).

8 (II) An employer may establish significantly greater damage
9 pursuant to subclause (I) or (II) of clause (i) by conducting a test
10 in an area representative of weeding, thinning, or hot-capping
11 conditions in the rest of the field or in the area or areas of the field
12 for which an exception is claimed. The test must be of sufficient
13 size to allow for an objective demonstration of the significantly
14 greater damage that can reasonably be expected to occur if a
15 similar effort to use required tools or alternatives was made in the
16 entire field or in all the areas of the field for which an exception
17 is claimed.

18 (iii) The division shall consider the fact that a crop is certified
19 organic under applicable state or federal law, in determining
20 whether a significantly greater damage would be caused by the use
21 of required tools or alternatives than would be caused by hand
22 weeding, thinning, or hot-capping.

23 (C) Except as provided in subparagraphs (A) and (B),
24 appropriate long-handled hand tools or available non-hand
25 weeding, thinning, or hot-capping alternatives shall be used at all
26 times.

27 (4) The crop being produced is for planting seed to be used for
28 research development, production, or multiplication, and hand
29 weeding or thinning is required to eliminate off-type plants, meet
30 purity and germination standards required by law, or for other
31 plant selection purposes required to produce a particular seed crop
32 when any seed crop is produced by a seed labeler registered
33 pursuant to Section 52351 of the Food and Agricultural Code, a
34 company producing flower seed for planting, or anyone producing
35 or planting seed under contract by a third party for a registered seed
36 labeler. The exemption granted by this paragraph pertains to fields
37 dedicated only to producing planting seeds and does not apply to
38 any non-seed crops grown by a registered seed labeler or a grower
39 under contract with a registered seed labeler.

1 (5) The crop is being produced in containers with a diameter of
2 12 inches or less, or a container of comparable size, where proper
3 use of a reasonably available and appropriate long-handled hand
4 tool causes significant damage to the particular crop at its current
5 state of development.

6 (d) A long handled hand tool used to weed, thin, or hot-cap
7 shall not be used as a short-handled hand tool in a stooped,
8 kneeling, or squatting position.

9 (e) When paragraph (2), (3), (4), or (5) of subdivision (c)
10 prevents the use of a long-handled hand tool, the employer shall
11 do all of the following:

12 (1) Prohibit employees from using a short-handled hand tool,
13 as defined in Section 3437 of Title 8 of the California Code of
14 Regulations, if the use of the tool requires an employee to stoop,
15 kneel, or squat.

16 (2) Reduce or eliminate the degree of hand weeding, thinning,
17 or hot-capping required, by implementing reasonably available
18 administrative controls, or reasonably available mechanical or
19 cultural non-pesticide, *non-herbicide*, non-hand weeding,
20 thinning, or hot-capping alternatives, or both. Nothing in this
21 paragraph requires the use of genetically engineered crops,
22 cost-prohibitive administrative controls, or cost-prohibitive
23 mechanical or cultural alternatives.

24 (3) In addition to providing any other tools, equipment, or
25 protective gear required for the performance of the work, provide
26 personal protective equipment, including gloves and, if work is
27 performed in a kneeling position, knee pads, and provide one
28 compensated 10-minute rest break at the end of each two-hour
29 work period in which the employee is required to perform hand
30 weeding, thinning, or hot-capping pursuant to an exception
31 permitted by this section.

32 (f) Nothing in this section is intended to prohibit brief,
33 occasional hand weeding, thinning, or hot-capping that is
34 incidental to either of the following:

35 (1) The use of a long-handled hand tool, provided that the
36 employee immediately returns to an upright position and
37 continues use of a long-handled hand tool after picking an
38 occasional weed.

39 (2) A non-hand weeding operation.

1 (g) An employer shall provide all hand tools used pursuant to
2 this section, in accordance with applicable orders of the Industrial
3 Welfare Commission.

4 (h) A violation of this section shall be deemed to be a violation
5 of an occupational safety and health standard within the meaning
6 of Section 6305.

7 (i) *Until January 1, 2006, only paragraph (3) of subdivision (e)*
8 *shall apply to crops certified as organic or transitional organic*
9 *under applicable state or federal law.*

